

REMARKS/ARGUMENTS

Claims 1-6, 8-12 and 15 remain pending in the Application. Claims 1 and 9 are amended herein. No new matter is added as a result of the Claim amendments.

35 U.S.C. § 101 Rejections

Claims 1-8 are rejected under 35 U.S.C. § 101 for being directed to non-statutory subject matter. Applicants respectfully disagree with the non-statutory statement regarding a content server and an adaptive load control system which are intended as embodiments that consist entirely of software. For example, page 10 lines 5-9 states (emphasis added):

“As can be seen from Figure 2, a data service system 30 in accordance with one embodiment of the present invention is shown to include a content server 31. The data service system 30 also includes an adaptive load control system 40 that controls the load condition of the content server 31 in accordance with one embodiment of the present invention”.

On page 11, lines 9-13, the instant application states (emphasis added):

The data service system 30 can be implemented in a computer system or other data processing system. The computer system that implements the data service system can be (a) server computer system, a workstation computer system, a personal computer system, or a mainframe computer system, a notebook computer system, or any other computer system”.

On page 16, lines 21-page 17, line 1, the instant application states (emphasis added):

The adaptive load control system 40 can be implemented at any point in the data service system 30 where the server's requests and responses can be accessed. This means that the adaptive load control system 40 can be implemented in the web server software, in the UNIX socket library, or in the operating system of a computer system that embodies the data service system 30.

The applicants respectfully submit that the statement the embodiments of the present invention consist entirely of software are not supported in light of the instant specification. For example, an embodiment in which adaptive load control system 40 is implemented in the operating system of a computer system that embodies the data service system 30 clearly indicates that adaptive load control system 40 is stored in the data storage medium in which the operating system is also stored. Thus, upon startup of the computer system that embodies the data service system 30, the operating system and adaptive load control system 40 are accessed from a computer readable medium. Furthermore, the assumption that embodiments of the present invention consist entirely of software is not supported either in the instant specification, or the conventional understanding of the operation of a computer system in which computer implemented instructions, including a computer operating system and/or adaptive load

control system 40, are stored in a computer readable medium. Applicants respectfully submit the use of “computer” and “operating system” in the specification must be given their plain meaning. In other words, they must be read as they would be interpreted by those of ordinary skill in the art. In *re Sneed*, 710 F.2d 1544, 218 USPQ 385 (Fed. Cir. 1983). For this reason, Applicants respectfully submit that the rejection of Claims 1-8 under 35 U.S.C. §101 is incorrect and should be withdrawn.

35 U.S.C. § 103 Rejections

Claims 1-12 and 15 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Daneels (U.S. Patent No. 6,038,598), hereinafter referred to as “Daneels,” in view of Engelschall (“Apache HTTP Server Version 1.3: Module mod_rewrite”), hereinafter referred to as “Engelschall,” and in view of Abbott et al. (U.S. Patent No. 6,314,463), hereinafter referred to as “Abbott.” Claim 1 of the present invention recites (emphasis added):

A data service system in a data service network system, comprising:

a content server that statically stores a plurality of content files for access by external access requests, wherein a first of said plurality of content files comprises content stored in a full content format and wherein a second of said plurality of content files comprises corresponding content stored in an adapted content format which is less resource-intensive to serve than the full content format; and

an adaptive load control system coupled to said content server to pass the access requests to said content server, wherein the adaptive load control system modifies an access request address to access said second of said plurality of content files instead of said first of said plurality of content files by modifying a URL (Universal resource Locator) of the access request address when said content server is in an overload condition such that said content server is maintained at safe load conditions, said adaptive load control system comprising:

a load monitor that monitors the load condition of said content server without requiring monitoring of the network, said load monitor establishing the load condition of said content server by measuring an amount of time between when said content server receives the external access request and when said content server provides the external access request.

Independent Claim 9 contains similar limitations and was rejected with the same rationale as Independent Claim 1. Claims 2-6 and 7 that depend from Independent Claim 1, and Claims 10-12 and 15 that depend from Independent Claim 9 provide further recitations of the features of the present invention. According to MPEP 2143.01(VI), “[i]f the proposed modification or combination of the prior art would change the principle of operation of the invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” In *re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)” (emphasis added).

The primary reference relied upon is the Daneels reference. The rejection relies upon Daneels to teach the content server and adaptive load control system elements of Applicant’s claimed invention. Per Applicant’s understanding, the principle of operation of Daneels involves a web server which “maps a plurality of web pages to a single uniform resource locator (URL),” (emphasis added) see, e.g., column 1, line 66-column 2 line 1 of the Daneels reference. In paragraph 58, Robbins describes that a GSM

telephone is one type of a mobile user. With reference to paragraph 54 and Figure 1 of Robbins, Applicant understands Robbins to teach:

The Examiner indicates (and Applicants agree) that Daneels does not teach or suggest an adaptive load control system to modify an access attempt by modifying an access request address. The Examiner further indicates (and Applicants agree) that Daneels does not teach or suggest a load monitor which establishes the load condition of a content server by measuring an amount of time between when the content server receives an external access request and when the content server provides the external access request. To remedy this deficiency, the rejection relies upon Engelschall to teach "modifying access request attempts by modifying an access request address," as recited in Claim 1.

Per Applicant's understanding, Daneels teaches that a web page set is defined as a group of HTML web pages that are interconnected by links such that there are no links into the set except from a single web page (column 2, lines 40-42). Further, Applicant understands Daneels to teach the multiple web page sets are mapped to a single Uniform Resource Locator (URL). When a server receives a request for a URL, it determines the web page sets which can be served to the user. The server then examines each web page set in turn, evaluating the conditions for each one. When the server finds a set where the conditions are evaluated to be true, the server returns the set's entry pages as the response to the URL (column 2, lines 45-53).

Applicant submits that in modifying Daneels with Engelschall, the Examiner has created as system which previously mapped a plurality of content files (e.g., the web page sets) with a single access request address (e.g., a URL) with a system that would modify the URL of the access request address to a second URL of a second set of content files. Applicant submits this significantly changes the principle of operation of Daneels from mapping a plurality of web page sets to a single URL, to a system which modifies a request address URL to a plurality of request address URLs. As such, in accordance with MPEP 2143.01(VI), Applicant submits that the combined teachings of the Daneels and Engelschall references are not sufficient to render the claims *prima facie* obvious, as the suggested combination of Daneels with Engelschall significantly changes the principle of operation of Daneels.

The rejection states that motivation for combining the inventions of Daneels and Engelschall would be in order to provide for URL redirection that is transparent to the user. The Applicants submit that motivation for combining the inventions of Daneels and Engelschall is lacking based upon the cited references. Neither Daneels nor Engelschall teach or suggest a combination as suggested in the rejection. Furthermore, the Applicants understand the described method and apparatus of Daneels to redirect a user to a particular web page set in a manner which is already transparent to the user. Furthermore, neither Daneels alone, or in combination with Engelschall, suggests an advantage in

providing URL redirection over the method described in the Daneels reference. Accordingly, the Applicants submit that motivation to combine the cited references for the purpose described in the rejection is lacking.

Furthermore, MPEP 2141.01(a)(III) recites:

The requirement “at the time the invention was made” is to avoid impermissible hindsight. See MPEP § 2145, paragraph X.A. for a discussion of rebutting applicants’ arguments that a rejection is based on hindsight.

“It is difficult but necessary that the decision maker forget what he or she has been taught . . . about the claimed invention and cast the mind back to the time the invention was made (often as here many years), to occupy the mind of one skilled in the art who is presented only with the references, and who is normally guided by the then-accepted wisdom in the art.” *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

The Applicants respectfully submit that as there is no apparent advantage in converting the system of Daneels into a system which provides URL redirection, the combination of the cited references is based upon the disclosed features of the present invention. Accordingly, the Applicants submit that it would not be obvious to modify the system of Daneels to modify access request addresses as taught by Engelschall. As such, in accordance with MPEP 2143.01(VI), Applicant submits that the combined teachings of the Daneels and Engelschall references are not sufficient to render the claims *prima facie* obvious, because the suggested combination of Daneels with Engelschall significantly changes the principle of operation of Daneels. Thus, the Applicants respectfully submit that the rejections of Claims 1 and 9 under 35 U.S.C. § 103(a) are not supported by the cited references.

Similarly, the Applicants respectfully submit that Abbott does not teach or suggest an adaptive load control system coupled to a content server which passes an access requests to said content server and which modifies an access request address by modifying a URL (Universal resource Locator) of the access request address when the content server is in an overload condition such that said content server is maintained at safe load conditions as recited in Claims 1 and 9 of the present invention. In other words, Abbott does not overcome the shortcomings of Daneels and Engelschall. Accordingly, the Applicants respectfully submit that Daneels alone, or in combination with Engelschall and Abbott, does not teach or suggest the claim limitations recited in Claims 1 and 9 of the present invention. Thus, the Applicants respectfully submit that the rejections of Claims 1 and 9 under 35 U.S.C. § 103(a) are not supported by the cited references.

Claims 2-6 and 8 depend from Claim 1 and recite additional features descriptive of embodiments of the present invention. Accordingly, the Applicants respectfully submit that the rejections of Claims 2-6 and 8 under 35 U.S.C. § 103(a) are not supported by the cited references.

Claims 10-12 and 15 depend from Claim 9 and recite additional features descriptive of features of the present invention. Accordingly, the Applicants respectfully submit that the rejections of Claims 10-12 and 15 under 35 U.S.C. § 103(a) are not supported by the cited references.

CONCLUSION

In light of the above remarks, the Applicants respectfully request reconsideration of the rejected Claims.

Based on the arguments presented above, the Applicants respectfully assert that Claims 1-6, 8-12, and 15 overcome the rejections of record and, therefore, the Applicants respectfully solicit allowance of these Claims.

The Examiner is invited to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

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